

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

AMERICAN MEDICAL RESPONSE, INC.

and

Case 1-CA-35553

ALLEN BRYER, an Individual

and

Case 1-CA-35578

CHARLES WILLIAMS, an Individual

and

Case 1-CA-35600

GEORGE A. GARDINER, JR., an Individual

INTERNATIONAL ASSOCIATION OF EMT's &  
PARAMEDICS, NAGE, AFL-CIO

and

INTERNATIONAL ASSOCIATION OF EMT's &  
PARAMEDICS, LOCAL 1, NAGE, AFL-CIO

and

Case 1-CB-9098

ALLEN BRYER, an Individual

and

Case 1-CB-9101

CHARLES WILLIAMS, an Individual

and

Case 1-CB-9106

GEORGE A. GARDINER, JR., an Individual

*Laura A. Sacks, Esq., and Sara R. Lewenberg, Esq.,*  
of Boston, MA, for the General Counsel.  
*Wendy M. Bittner, Esq., and Joseph G. Donnellan, Esq.,*  
of Boston, MA, for Respondent Union.  
*Arthur P. Menard, Esq., and Terence P. McCourt, Esq.,*  
of Washington, D.C. and Boston, MA, for Respondent Employer.

## DECISION

## Statement of the Case

5           Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me in  
Boston, Massachusetts on May 18, 19, 20, 21 and June 24, 1998, pursuant to a Consolidated  
Complaint and Notice of Hearing (the complaint) issued by the Regional Director for Region 1  
10 of the National Labor Relations Board (the Board) on February 25, 1998. The complaint, based  
on original charges filed on various dates in 1997<sup>1</sup> and certain amendments thereto filed on  
15 various dates in 1998, by individual employees Allen Bryer, Charles Williams, Sheila O'Malley,<sup>2</sup>  
and George A. Gardiner, Jr., alleges that American Medical Response, Inc. (Respondent AMR  
or AMR) and International Association of EMT's & Paramedics, NAGE, AFL-CIO (Respondent  
20 IAEP or Union), and International Association of EMT's & Paramedics, Local 1, NAGE, AFL-  
CIO (Local 1), has engaged in certain violations of Section 8(a)(1), (2), (3) and 8(b)(1)(A) and  
25 8(b)(2) of the National Labor Relations Act (the Act).

## Issues

30           The complaint alleges that Respondent AMR granted recognition on July 29, to  
Respondent IAEP for former unrepresented employees and extended, maintained and enforced  
its current collective-bargaining agreement that contains a union security clause to these  
35 unrepresented employees even though Respondent IAEP did not represent an uncoerced  
majority of employees in an appropriate unit.

40           On the entire record, including my observation of the demeanor of the witnesses, and  
after considering the briefs filed by the General Counsel, Respondent AMR and Respondent  
IAEP, I make the following  
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<sup>1</sup> All dates are in 1997 unless otherwise indicated.

<sup>2</sup> The charges in Cases 1-CA-35599 and 1-CB-9105, filed by Sheila O'Malley, were withdrawn prior to the opening of the subject hearing and are not part of this decision.

## Findings of Fact

### I. Jurisdiction

5 Respondent AMR, a corporation, is engaged in the operation of an ambulance service,  
with offices and places of business throughout the United States, including an office and place  
of business in Natick, Massachusetts, where it annually purchased and received goods and  
10 materials at its facility in excess of \$50,000 directly from points outside the Commonwealth of  
Massachusetts. Respondent AMR admits and I find that it is an employer engaged in  
15 commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union and  
Local 1 are labor organizations within the meaning of Section 2(5) of the Act.

### II. Alleged Unfair Labor Practices

#### A. Background

25 In July 1995, a company known as Chaulk Services, Inc. and Ambulance Systems of  
America, Inc. (ASA) merged.<sup>3</sup> In October 1995, Respondent AMR acquired these merged  
companies. On January 4, a company known as Laidlaw, Inc. (Laidlaw), put forth a tender offer  
30 to acquire Respondent AMR, and on February 19, Respondent AMR became a wholly owned  
subsidiary of Laidlaw.

35 In January 1997, Med-Trans Ambulance Co. (Med-Trans) acquired Brewster Ambulance  
Co. (Brewster), and later in January 1997, Laidlaw acquired Med-Trans. Accordingly, when  
Laidlaw acquired Respondent AMR, it now owned Respondent AMR, Med-Trans and Brewster.

40 In 1996, Respondent IAEP and Respondent AMR entered into a four year (July 6,  
1996-July 5, 2000) collective-bargaining agreement for AMR employees employed in Maine,  
New Hampshire, Rhode Island and eastern Massachusetts, including the metropolitan  
45 Worcester area for the following unit:

The Employer recognizes the Union as the exclusive bargaining representative

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<sup>3</sup> Respondent IAEP, based on Board Certifications, is the exclusive collective-bargaining  
Continued

for the purpose of collective bargaining for all full-time and part-time emergency medical technicians (EMT's) and paramedics (including field trainers and lead technicians), cardiac technicians, intermediates, telecommunications operators, dispatchers, and wheel chair car drivers, including employees, who regularly average 4 or more hours of work per week, employed by American Medical Response of Massachusetts, Inc.

Excluded from this Agreement are all other employees, including but not limited to, buildings and ground employees, maintenance employees, office clerical employees, professional employees, guards, managerial employees, all supervisors as defined in the Act, and all employees of Commonwealth Ambulance Service, Inc. which ambulance service has a collective-bargaining Agreement with OPEIU, Local #6.

Before February 19, the parties' collective-bargaining agreement covered approximately 1300 AMR employees. At the time of the acquisition, Med-Trans employed approximately 360 unrepresented employees while Brewster's unrepresented employees numbered around 400.

On March 17, Respondent IAEP filed a unit clarification petition with the Board in Case 1-UC-713, but subsequently withdrew it. On May 16, Respondent IAEP filed a second unit clarification petition in Case 1-UC-716, and a hearing was conducted before a Board hearing officer on June 10. On June 12, Teamsters Local Union 653 filed a representation petition in Case 1-RC-20638, seeking to represent EMT's and paramedics in AMR's South Division station locations. On June 25, Teamsters Local 25 filed a representation petition in Case 1-RC-20642, seeking to represent EMT's and paramedics in AMR's South Boston, Hyde Park, Readville, Dedham, Weymouth & Quincy station locations.

On July 1, the merger became official and the Articles of Merger were filed with the Massachusetts Secretary of State (Resp. AMR Ex. No. 1). As a result of the merger,

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representative for the Chaulk and ASA employees (Jt. Ex. Nos. 9 and 22).

Respondent AMR added 30 new station locations throughout Massachusetts to the approximate 30 station locations it already maintained throughout Massachusetts, Rhode Island, Maine, and New Hampshire.

On July 21, the Board consolidated the UC and RC petitions and conducted a representation hearing. During the course of the hearing, Teamsters Local Union 653 and 25 withdrew their respective representation petitions.

On July 29, Respondent AMR granted recognition to the Union as the exclusive bargaining representative of all former Med-Trans and Brewster employees employed in Massachusetts and extended all of the benefits, privileges and obligations of the collective-bargaining agreement, in effect between the parties, to these employees. As part of the parties' agreement extending recognition, the Union withdrew the petition in Case 1-UC-716 (Jt. Ex. No. 20).

#### B. AMR's Organizational Structure

After the acquisition, AMR's central headquarters located in Aurora, Colorado, began the process of reorganizing its nationwide operation. For this purpose, the United States was broken down into four specific groups consisting of the Western Group, which includes Divisions 1, 2, 3, and 4, the Central Group which is made up of Divisions 5, 6, 7, 8, 9, and 10, the Eastern Group includes Divisions 11, 12, 13, and 14, and the Southern Group contains Divisions 15, 16, 17, 18, 19, 20, and 21.

The subject case concerns employees located in Division 12 and 13. The Commonwealth of Massachusetts falls within Division 12 and 13 and was split in half primarily because of call volume and revenues among divisional lines. Division 12 covers Eastern Massachusetts, Maine, Vermont, New Hampshire and Rhode Island. It is further divided by regions including the north, central, and south regions. Division 13 covers Western Massachusetts including the Worcester area, Connecticut and New York.

Division 12 headquarters is located in Natick, Massachusetts while Division 13

headquarters is in New Haven, Connecticut. Effective May 5, Division 12 is identified as AMR Northeast and Division 13 is known as AMR New York/Southern New England. Division 12 has approximately 2500 employees while Division 13 has around 3,000 employees. There are around 300-350 employees in the Worcester area that is part of Division 13. Within Division 13 there are eight current collective-bargaining agreements, in effect, between Respondent AMR and various labor organizations.<sup>4</sup> Additionally, in Division 13, Respondent maintains and operates several non-union stations, including North Hampton, Massachusetts, Bridgeport, Waterbury, and Southington Connecticut, and Farmington and Ronkonamha Long Island, New York.

Both Division 12 and 13 are headed by a separate Divisional CEO, who supervise Directors or Vice Presidents in charge of Human Resources, Logistics, Support Services, Operations, Financial Services, Corporate Development, Education Services, Continuous Quality Improvement and Patient Account Information.

### C. Emergency Medical Services

The Office of Emergency Medical Services (EMS) is the agency in the Commonwealth of Massachusetts designated by statute to oversee, coordinate and regulate emergency medical services. For this purpose, five Regional EMS Councils are designated for coordinating the delivery of EMS within its geographic boundaries. Within each of the Regions are local regions referred to as consortiums. Each Advanced Life Support (ALS) ambulance service is required by regulation to have an affiliation agreement with a hospital and that affiliation agreement identifies a medical director who is responsible for the medical direction of the paramedics within the system. Paramedics are required to credential with a specific

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<sup>4</sup> They include the subject agreement covering EMT's and paramedics in the Worcester area, the agreement with the Office and Professional Employees International, Local 6, covering EMT's and paramedics in the Springfield area (Jt. Ex. No. 21), the negotiation of an agreement with the Service Employees International Union, Local 285, covering EMT's and paramedics in the Pittsfield area pursuant to its December 2, certification, and the remaining five agreements are for EMT's and paramedics located in Connecticut and New York.

Medical Director.

Respondent AMR employs approximately 1500 EMT's and 300 paramedics within  
5 Division 12, who provide emergency medical services to patients located within the geographic  
boundaries of the Division. All EMS employees must operate under the license of a physician  
since they are certified and do not hold a license. After the merger the Medical Director for  
10 Respondent AMR, Dr. Assaad J. Sayah, assumed responsibility for the training and education  
of former Med-Trans and Brewster employees as they were now operating under his license.  
15 Training to achieve EMT status requires 500 hours while paramedics receive approximately  
2,000 hours of training before being certified in Massachusetts. After reaching basic EMT  
status, employees can advance to EMT intermediate and then progress to the paramedic  
20 classification. In order to perform medical services within each of the Regions or local  
consortiums, paramedics must be individually credentialed within those locations and are not  
25 permitted to perform emergency medical services in Regions or consortiums that they are not  
credentialed.

30 In an EMS system, response time is the single most critical issue in the provision of  
emergency medical care. The system of parking emergency vehicles at fire stations or at fixed  
EMS locations that predominated through the 1970's has been replaced by the concept of  
35 System Status Management. Under that concept, an analysis of call volume is used to apply  
staffing patterns and vehicles are posted at various locations to increase response time to  
handle demand. Each ambulance crew is assigned and reports to a station location to pick up  
40 their vehicle and are then posted to different locations.

#### D. Events after the Acquisition

45 Respondent AMR made a number of changes to its organization and commenced a  
structured program of consolidation after the February 19, acquisition. For example, a number  
of station locations were closed or downsized when original AMR station locations were  
geographically proximate to former Med-Trans or Brewster station locations. Employees at

these locations were either temporarily transferred or permanently assigned to new station locations, so that in a number of circumstances original AMR employees work at the same station location along side former Med-Trans or Brewster employees (G.C. Ex. No. 20). For example, the Hyde Park station location contains approximately 189 original AMR employees and approximately 88 former Brewster employees. Likewise, in certain station locations, former Med-Trans and Brewster employees now partner with original AMR employees. Thus, in a number of station locations, there is daily contact among original AMR and former Med-Trans and Brewster employees. Such contact also occurs when ambulance crews respond to the same call, when an ALS/BLS intercept occurs,<sup>5</sup> and when emergency situations require multiple vehicles to respond to the same call. Additionally, based on operational necessity, employees are temporarily transferred between one and 30 days from their permanently assigned location to another station location either physically reporting into that station location to receive work assignments or receiving radio dispatched calls while in their vehicle from the new station location. At the end of each work shift, employees that are temporarily transferred into another station location return to their home base and are given instructions for their next work assignment that might include reporting back to that same temporarily assigned station location, reporting to another nearby station location or remaining within the boundaries of their permanently assigned station location.

Effective with the February 19 acquisition, Respondent AMR began the task of restructuring its operation both on a national and divisional basis. On a national basis, common standardization of payroll functions, fleet purchase and maintenance of vehicles, procurement of medical supplies, standardization of a common uniform, and centralization of human resource functions were undertaken. Some of these changes were slowed because they had to be approved by the Federal Government including employee 401 (k) plans and Medicare and

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<sup>5</sup> In an EMS model system, a paramedic equipped vehicle responds to assist an ambulance with EMT's who are qualified only to give Basic Life Support (BLS) assistance.



Medicaid approval for billing purposes. The payroll operation for 26,000 employees needed to be centralized and this is the reason that former Med-Trans and Brewster employees continued to receive paychecks throughout 1997 under the logo of their former employer with all employees receiving their W-2 tax forms for that year from Respondent AMR's headquarters in Colorado.

As it relates to Division 12, former managerial and supervisory personnel of original AMR and former Med-Trans and Brewster entities are unified into one management structure. Thus, in a number of station locations, original AMR supervisors supervise former Med-Trans and Brewster employees while former Med-Trans and Brewster supervisors supervise original AMR employees.

Hiring is centralized in Natick, new employee interviewing and orientation takes place in Hyde Park and disciplinary standards are uniform for all employees. While all employees continued to wear their former uniforms until they were fitted and wore a standardized uniform after August 1997, they received an AMR patch in early spring 1997, to be affixed on their uniforms. On a staggered basis, all vehicles were repainted to reflect the AMR logo and new station location signs were completed. All billing and accounts payable are consolidated in the Natick office and all vendors were notified of the change. The dispatch function for vehicles and chair cars, fleet maintenance, procurement of materials and the marketing function all became centralized within the division. Training for refresher courses is centralized in Hyde Park and mandatory training and monthly station meetings take place at various station locations for original AMR employees along side of former Med-Trans and Brewster employees.

### III. Analysis and Conclusions

#### A. The Arguments of the Parties

The General Counsel alleges in paragraphs 7(a) and 7(b) of the complaint that Respondent AMR violated Section 8(a)(1), (2) and (3) of the Act by extending recognition to Respondent IAEP and Local 1 as the exclusive bargaining representative in an inappropriate

unit consisting of original represented AMR employees and formerly unrepresented Med-Trans and Brewster employees, and by applying the terms of the existing collective-bargaining agreement to the unit employees. It further alleges in paragraphs 9(a) and 9(b) of the complaint that Respondent IAEP and Local 1, by obtaining recognition from Respondent AMR and applying the terms of the existing collective-bargaining agreement to the unit employees, independently violated Section 8(b)(1)(A) and 8(b)(2) of the Act. The General Counsel further argues that the overall unit is not presumptively appropriate under any Board standard. In this regard, the General Counsel relies on the fact that the unit is not employerwide nor is it an administratively divided unit as recognition was extended to include areas both in AMR's Division 12 and 13, with the later Division including both represented and unrepresented employees at certain station locations. In addition, under the accretion principles established by the Board, the employees have retained their own identity such that they could appropriately be included in another unit. Moreover, there is not a substantial community of interest to properly include the formerly unrepresented Med-Trans and Brewster employees in the existing unit. Thus, it is inappropriate to disenfranchise the approximate 760 former unrepresented employees from their right to select or not select a representative of their own choosing.

Respondent AMR opines that it extended recognition consistent with the terms of the parties' pre-existing collective-bargaining agreement, and the original AMR employees still constitute a majority of the employees in the appropriate bargaining unit. It further argues that the purpose of the acquisition was to provide efficient and cost effective service in a very competitive environment and in order to accomplish this purpose, all of the traditional community of interest's factors was met. In this regard, Respondent AMR integrated its operations, centralized labor relations and the prior identity of former Med-Trans and Brewster employees has been, essentially, obliterated. Further, wages have been raised to bring the previously unrepresented employees to parity with other employees under the collective-bargaining agreement and other terms and conditions of employment have been standardized.

Respondent AMR and Respondent IAEP in denying that the Act has been violated assert that this is a paradigmatic case in that the Board has not addressed the principles of accretion in the context of emergency medical services. They point to a line of cases in the package delivery and public utilities industries as instructive in determining the appropriateness of the unit and the extension of recognition in the subject case.

#### B. Board Case Law

In *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973), the Board described the rationale for its view that, in general, systemwide units are optimal in the public utility industry:

As the parties are aware, the line of Board precedents developed for the public utility industry contains frequent expression of the Board's view that a systemwide unit is the optimal appropriate unit in the public utility industry and of the strong considerations of policy which underlie that view. That judgement has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations. It has done so only when there was compelling evidence that collective bargaining in a unit less than systemwide in scope was a "feasible undertaking" and there was no opposing bargaining history. As an examination of the cases in which narrower units have been found appropriate indicates, it was clear in each case that the boundaries of the requested unit conformed to a well-defined administrative segment of the utility company's organization and could be established without undue disturbance to the

company's ability to perform its necessary functions.<sup>6</sup>

The Board follows a restrictive policy in finding accretion because it forecloses the employees' basic rights to select their own bargaining representative. *Towne Ford Sales*, 270 NLRB 311 (1984); *Melbet Jewelry Co.*, 180 NLRB 107 (1970).

Accretion is not applicable to situations in which the group sought to be accreted would constitute a separate appropriate bargaining unit. *Passavant Health Center*, 313 NLRB 1216 (1994). The Board will find a valid accretion when the extended recognition involves employees who have little or no separate group identity and when the additional employees share an overwhelming community of interest with the pre-existing unit. *Super Valu Stores, Inc.*, 283 NLRB 134, 136, (1987); *Safeway Stores*, 256 NLRB 918 (1981).

The Board when considering the appropriateness of accreting employees into an established bargaining unit, evaluates the following factors: "the integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control over labor relations, collective bargaining history and interchange of employees." *TRT Telecommunications Corp.*, 230 NLRB 139, 141 (1977).

Lastly, the Board has held that unit clarification and accretion principles are applicable to merged operations involving represented and unrepresented employees. *Armco Steel*, 312 NLRB 257, 259 (1993); *Central Soya Company, Inc.* 281 NLRB 1308 (1986).

### C. Conclusions

#### 1. The Appropriate Unit

The subject case presents an opportunity to determine whether Respondent AMR

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<sup>6</sup> In *Purolator Courier Corp.*, 265 NLRB 659 (1982), the Board concluded that the courier-guards in the Employer's south-central region rather than a single location unit at one location was appropriate for collective-bargaining purposes. In this regard, all of the Employer's courier-guards wear identical uniforms, drive the same type of vehicle, perform the same work duties, and are subject to the same work rules and enjoy common wage scales, increases, vacation benefits and paid holidays all of which are determined by the national headquarters.

extended recognition in an inappropriate unit, whether a systemwide unit is the optimal appropriate unit as found in the public utility industry or as the Board has held a narrower unit is appropriate when it is clear that the unit conforms to a well-defined administrative segment of the organization and could be established without undue disturbance to the Company's ability to perform its necessary functions.

The facts in this matter establish that all original AMR and former Med-Trans and Brewster employees are subject to the same company-wide policies, practices and procedures. In the main, all terms and conditions of employment, specifically including hours, wage rates, wage progressions, fringe benefits, work rules, job classifications and duties within those classifications are instituted and determined on a division-wide basis. It is undisputed that each AMR division maintains strict control over virtually all aspects of operations and labor relations throughout its geographic boundaries, and maintains uniform control over scheduling and routes assigned to its employees. Division personnel spend a substantial amount of time visiting the station locations where they review routes and monitor compliance with all of AMR's policies and procedures. All of AMR's employees including former Med-Trans and Brewster personnel wear identical patches and after August 1 the same uniforms, drive the same type of vehicle, perform the same work duties, are subject to the same work rules and receive the same benefits. Likewise, all employees receive the same annual and sick leave, the same number of holidays, and the national headquarters in Colorado handles their payroll.

Each division plays an important role in hiring, firing, and transferring employees, and centralizes the format and language to be used in advertisements for new hires. New employee orientation and interviewing is centralized within each AMR division. Training and staff meetings are centralized by division and involve contact among original AMR and former Med-Trans and Brewster employees. Contact among employees also occurs when the crews respond to the same call and in a situation requiring multiple vehicles to respond to the same emergency call. Transfers also require the approval of division personnel. In this regard,

temporary transfers from one station location to another from one to thirty days in duration occur on a regular basis. Thus, EMT's and paramedics are transferred from their permanent station location to other nearby station locations either physically reporting into that station to receive work assignments or they receive radio dispatched assignments while in their vehicles from the new station location. At the completion of the daily work shift, employees return to their permanently assigned station location and receive their work assignments for the next shift which might include returning to the same temporarily assigned station location, being sent to another nearby station location or remaining within the boundaries of their permanently assigned station location.

In view of the factors discussed above, I conclude that a bargaining unit limited to AMR's Division 12 employees rather than an employerwide unit is appropriate in the subject case. I reach this decision based on the high degree to which AMR's operations are integrated as a result of demands for time-sensitive response time, the overlapping and common supervision under which EMT's and paramedics routinely work, the contact among original AMR and former Med-Trans and Brewster employees in individual station locations throughout Division 12, the uniformity of EMT's and paramedics working conditions and duties, and the broad authority over daily operations and labor relations exercised by Division 12 personnel.

Based on this finding, it follows that when Respondent AMR extended recognition to Respondent IAEP for the employees located in Division 12, it was a legitimate and lawful exercise and did not contravene the Act. Indeed, the original AMR employees still constitute a numerical majority when the former Med-Trans and Brewster employees are included in the Division 12 unit. *Central Soya Company, Inc., supra*. On the other hand, the facts establish that the extension of recognition reaches across divisional boundaries and includes former Med-Trans employees located in the Worcester area that is part of Division 13.

The record establishes that AMR has eight separate collective-bargaining agreements with various labor organizations including the subject Union in Division 13. Additionally, it is

undisputed that Division 13 contains unrepresented employees in stations including North Hampton, Massachusetts, Bridgeport, Waterbury and Southington Connecticut, and Farmington and Ronkonamha, Long Island, New York. I find that the former Med-Trans employees in Division 13 have retained there own identity such that they could appropriately be in another bargaining unit and do not share a community of interest with employees in the Division 12 unit . Under these circumstances, and particularly noting my finding that AMR divisions are appropriate administrative segments, the extension of recognition to those former Med-Trans employees located in Division 13 contravenes the Act.

Therefore, I find that when Respondent AMR extended recognition to Respondent IAEP for the former Division 13 Med-Trans unrepresented employees and Respondent IAEP acquiesced, Respondent AMR violated Section 8(a)(1) and (2) of the Act and Respondent IAEP violated Section 8(b)(1)(A) of the Act. Contrary to the General Counsel, I do not find that Respondent AMR extended recognition to Local I as the exclusive collective bargaining representative. In this regard, both the July 29 extension of recognition (Jt. Ex. No. 20), and the parties' collective-bargaining agreement (Jt. Ex. No. 1), conclusively establish that only Respondent IAEP obtained recognition for the employees in the unit. Thus, Local 1 did not violate Section 8(b)(1)(A) of the Act, and I recommend that those allegations be dismissed.

## 2. The Collective-Bargaining Agreement

The General Counsel alleges in paragraph 7(b) of the complaint that Respondent AMR has extended, maintained, and enforced a collective-bargaining agreement, containing a union security clause, with Respondent IAEP and/or Local 1 covering the employees in the Unit in violation of Section 8(a)(1) and (3) of the Act. Additionally, the General Counsel alleges in paragraph 9(b) of the complaint that Respondent IAEP and/or Local 1 has maintained and enforced a collective-bargaining agreement with Respondent AMR covering the employees in the Unit in violation of Section 8(b)(2) of the Act.

There is no dispute that the July 29 recognition agreement provides that AMR voluntarily

agrees to recognize the Union as the exclusive bargaining representative for all its employees, including the former Med-Trans and Brewster employees, and to extend all of the benefits, privileges and obligations of the collective-bargaining agreement, in effect between the parties, to its employees. Likewise, record testimony indicates that wages of former Med-Trans and Brewster employees were raised to the minimum level required in the parties' agreement to conform with those wage rates paid to original AMR employees, and certain former unrepresented employees after July 29, used the services of the Union for representational purposes under the parties' agreement.

Under these circumstances, I find that Respondent AMR and Respondent IAEP violated Section 8(a)(1) and (3) and 8(b)(2) of the Act when the parties' collective-bargaining agreement was extended to cover the wrongly accreted employees in Division 13. *Mego Corp. and Samet Wells, Inc.*, 254 NLRB 300 (1981). Consistent with my above finding, I do not find that Local 1 maintained and enforced the parties' collective-bargaining agreement and recommend that those allegations in the complaint be dismissed.

In regard to the union security provisions contained in the parties' agreement, credible testimony establishes that the provisions of the union security clause are not being enforced. Thus, no dues have been paid to the Union, no employee has been required to become a member of the Union and the Union has not requested AMR to terminate any employee for the refusal to tender periodic dues and initiation fees. According to the Board, however, this is not dispositive. Thus, in *Combustion Engineering*, 195 NLRB 909 (1972), the Board held that the fact that an employer expressed its intention to wrongfully accreted employees that the union-security provisions applied to them, violates the Act. In the subject case, the evidence shows that Olson told employees that Respondent would terminate employees for failing to pay union dues and Respondent IAEP sent correspondence stating that each employee must be a dues paying member to maintain employment. Accordingly, I find that Respondent AMR and IAEP violated Section 8(a)(1) and (3) and 8(b)(2) of the Act when they expressed their intention to



extend the union security provisions contained in the parties' agreement to the wrongly accreted employees in Division 13. Consistent with my above finding, I do not find that Local 1 maintained and enforced the parties' collective-bargaining agreement including the union-security provisions and recommend that those allegations in the complaint be dismissed.

### 3. The Status of Respondent AMR as a Health Care Institution

During the course of the hearing, Counsel for Respondent AMR and IAEP asserted that AMR might be a health care institution as defined in Section 2(14) of the Act, and therefore, should benefit from the Congressional admonishment against the undue proliferation of bargaining units in the health care field. .

While not dispositive to the underlying issues in this case, I find that the definition of a health care institution in Section 2(14) of the Act does not specifically include ambulance companies.<sup>7</sup> Thus as the Board held in *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), ambulance services are merely engaged in the business of transporting patients to health care institutions, and are not themselves health care institutions as defined in the Act. This specific finding was not disturbed by the United States Court of Appeals for the Tenth Circuit in *Southwest Community Health Services d/b/a Albuquerque Ambulance Service v. NLRB*, 736 F.2d 1332 (10<sup>th</sup> Cir. 1984).

### Conclusions of Law

1. Respondent AMR is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondent IAEP and Local 1 are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent AMR engaged in violations of Section 8(a)(1) and (2) of the Act by granting recognition to Respondent IAEP as the exclusive-collective bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

4. Respondent IAEP engaged in violations of Section 8(b)(1)(A) of the Act when it

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<sup>7</sup> In *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992), although the Regional Director found that the Employer, an ambulance service, is a health care institution under Section 2(14) of the Act, the Board did not address that issue as no party requested review of that finding.

5. Respondent AMR engaged in violations of Section 8(a)(1) and (3) of the Act when it extended, maintained, and enforced a collective-bargaining agreement containing union-security provisions with Respondent IAEP covering certain former unrepresented Med-Trans employees in AMR's Division 13.

6. Respondent IAEF engaged in violations of Section 8(b)(2) of the Act when it extended, maintained, and enforced a collective-bargaining agreement containing union-security provisions with Respondent AMR covering certain former unrepresented Med-Trans employees in AMR's Division 13.

7. Local 1 did not engage in violations of Section 8(b)(1)(A) or 8(b)(2) of the Act. It did not obtain recognition from Respondent AMR as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13 nor did it extend, maintain, or enforce a collective-bargaining agreement containing union-security provisions with Respondent AMR covering certain former unrepresented Med-Trans employees in AMR's Division 13.

8. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

## Remedy

Having found that Respondent AMR and Respondent IAEF have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

## ORDER

The Respondent, American Medical Response, Inc., Natick, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) granting recognition to International Association of EMT's & Paramedics, NAGE, AFL-CIO, (IAEP) as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

(b) extending, maintaining, and enforcing a collective-bargaining agreement containing union-security provisions with IAEP for certain former unrepresented Med-Trans

<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees in AMR's Division 13.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

5

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Natick, Massachusetts copies of the attached notice marked "Appendix."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all former unrepresented Med-Trans employees employed by the Respondent in its Division 13 at any time since July 29, 1997.

20

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

25

(c) Immediately withdraw and withhold recognition from IAEP as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

30

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found. IT IS ALSO PROVIDED that nothing in the Order requires the withdrawal or elimination of any wage increases or other benefits, terms, and conditions of employment that may have been established pursuant to the collective-bargaining agreement as it relates to certain former unrepresented Med-Trans employees in AMR's Division 13.

35

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

40

#### ORDER

The Respondent, International Association of EMT's & Paramedics, NAGE, AFL-CIO,

45

<sup>9</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

<sup>10</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Quincy, Massachusetts, its officers, agents, and representatives, shall

1. Cease and desist from

5 (a) obtaining recognition from American Medical Response, Inc., (AMR) and acting as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

10 (b) extending, maintaining, and enforcing a collective-bargaining agreement containing union-security provisions with AMR for certain former unrepresented Med-Trans employees in AMR's Division 13.

15 (c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

20 (a) Within 14 days after service by the Region, post at its union office in Quincy, Massachusetts copies of the attached notice marked "Appendix."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event  
25 that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all former unrepresented Med-Trans employees employed by AMR in Division 13 at any time since July 29, 1997.

30 (b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

35 (c) Immediately stop acting as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

40 Dated, Washington, D.C. October 30, 1998

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<sup>11</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Bruce D. Rosenstein  
Administrative Law Judge

5

APPENDIX

NOTICE TO EMPLOYEES

10

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

15

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

20

WE WILL NOT grant recognition to International Association of EMT's & Paramedics, NAGE, AFL-CIO, (IAEP) as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

25

WE WILL NOT extend, maintain, and enforce a collective-bargaining agreement containing union-security provisions with IAEP for certain former unrepresented Med-Trans employees in AMR's Division 13.

30

WE WILL withdraw and withhold recognition from IAEP as the exclusive collective-bargaining representative for certain former unrepresented Med-Trans employees in AMR's Division 13.

WE WILL maintain any wage increases or other benefits, terms, and conditions of employment that may have been established pursuant to the collective-bargaining agreement as it relates to certain former unrepresented Med-Trans employees in AMR's Division 13.

35

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

American Medical Response, Inc.

(Employer)

40

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

45

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, 6th Floor, Boston, Massachusetts 02222-1072, Telephone 617-565-6701.

## APPENDIX

## NOTICE TO MEMBERS

5 Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated the National Labor Relations Act  
and has ordered us to post and abide by this notice.

15 WE WILL NOT obtain recognition from American Medical Response, Inc., (AMR) as the  
exclusive collective-bargaining representative for certain former unrepresented Med-Trans  
employees in AMR's Division 13.

WE WILL NOT continue to act as the exclusive collective-bargaining representative for certain  
former unrepresented Med-Trans employees in AMR's Division 13.

20 WE WILL NOT extend, maintain, and enforce a collective-bargaining agreement containing  
union-security provisions with AMR for certain former unrepresented Med-Trans employees in  
AMR's Division 13.

25 WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights  
guaranteed you by Section 7 of the Act.

International Association of EMT's & Paramedics,  
NAGE, AFL-CIO  
\_\_\_\_\_  
(Labor Organization)

30 Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

35 This is an official notice and must not be defaced by anyone.

40 This notice must remain posted for 60 consecutive days from the date of posting and  
must not be altered, defaced, or covered with any other material. Any questions concerning this  
notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway  
Street, 6th Floor, Boston, Massachusetts 02222-1072, Telephone 617-565-6701.

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